2057.

SUPREME COURT OF THE UNITED STATES.

No. 93.

THE UNITED STATES, APPELLANT,

VERSUS

PHILIP R. YOUNGE.

APPEAL FROM THE SUPERIOR COURT OF EAST FLORIDA.

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Before the honorable the Judge of the superior court for the eastern district of Florida, and specially authorized by law to receive and adjudicate claims and titles to lands in the district of east Florida:

Be it remembered. that, on the nineteenth day of May, in the year of our Lord one thousand eight hundred and twenty-nine, Philip R. Younge brought and filed in the clerk's office of the superior court for the eastern district of Florida, his petition or claim to certain land therein mentioned; which said petition or claim is in the words and figures following, to wit:

PETITION FOR CONFIRMATION.

To the honorable Joseph L. Smith, judge of the superior court for the eastern district of Florida:

The petition of Philip R. Younge respectfully showeth, that your petitioner claims title to a certain tract of land containing five thousand acres, (being part of a grant to your petitioner for twenty-five thousand acres,) situated on the west side of the river St. Johns, to the south of a place called Spring Garden, and is bounded as will appear by a reference to the copies of the surveys of the said tract of twenty-five thousand acres abovementioned, hereto annexed, and marked exhibits A and B: the remaining part of your petitioner's grant, to wit, twenty thousand acres, has been sold or disposed of, as will appear, reference being had to the proceedings on the same now

on file in the office of register of lands for this district; which said tract of land of twenty-five thousand acres was granted to the said Philip R. Younge by the Spanish Government of east Florida, under the administration of Governor Coppinger, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and seventeen, as will appear by a translation of the said grant hereunto annexed, marked exhibit C.

And your petitioner further showeth, that the said grant was made to your petitioner in absolute property, as a reward for the distinguished and extraordinary services, both personal and pecuniary, with which he contributed to the defence of the said province at different times, and particularly during the insurrection which took place in the beginning of the year one thousand eight hundred and twelve, to the loss of his own property, and the economy of the royal treasury, all of which will appear by a reference to the translation of the said grant hereunto annexed.

And your petitioner further showeth, that the said tract of land is situated as aforesaid, within the district of east Florida, and within the jurisdiction of this honorable court, is embraced by the treaty between Spain and the United States of the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen; that his claim to said land has not been decided on, or finally settled under the provisions of the act of the Congress of the United States, entitled "Act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," passed the 23d day of May, in the year of our Lord one thousand eight hundred and twenty-eight, or of any of the acts to which the said last recited acts is supplementary; that the tract of land so claimed by your petitioner contains a greater quantity of land than the commissioners appointed under the said act of Congress were authorized to decide, and above the quantity confirmed by the aforementioned act of Congress, passed the twenty-third day of May, one thousand eight hundred and twenty-eight; that the said claim of your petitioner to the said land has not been reported by the said commissioners appointed under any of the aforesaid acts of Congress, or any other, or by the register and receiver acting as such under the several acts of Congress in such case made and provided, as antedated or forged; and that the said claim hath not been annulled by the aforesaid treaty between Spain and the United States, nor by the decree ratifying the same.

And your petitioner further showeth, that his claim to said land was submitted to the examination of the board of commissioners appointed under and in virtue of an act of Congress of the United States of America, entitled "An act amending and supplementary to an act for ascertaining claims and titles to lands in the territory of Florida, and to provide for the survey and disposal of the public lands in Florida," passed the third day of March, in the year of our Lord one thousand eight hundred and twenty-three, and has not been by the said commissioners reported and recommended by them to Congress for confirmation.

Wherefore, your petitioner prays that the validity of his title to said land may be inquired into and decided upon by this honorable court; and that, in pursuance of an act of Congress for that purpose made and provided, the United States be made a party to this petition, and that process in this behalf do forthwith issue against Thomas Douglass, esquire, the attorney of the United States for this district, according to the provisions of the said act of Congress above alluded to. And your petitioner will ever pray, &c.

PHILIP R. YOUNGE.

A copy of the foregoing petition, with a citation thereto annexed, was delivered to the marshal of this district, to serve on the United States for the same district; and the return of the said marshal thereon is in the words and figures following, to wit; "Served copy on Thomas Douglass, esquire, U. States' attorney, 11th June, 1829.

WATERS SMITH, *Marshal.*"

Exhibit C,

Annexed to, and made a part of the foregoing petition, and received in evidence in this case; being a translation made by the translator and interpreter of this court, from copy furnished and duly certified by the keeper of the public archives for East Florida, to wit:

ROYAL TITLE TO YOUNGE FOR 25,000 ACRES.—TRANSLATION.

Title of property to twenty-five thousand acres of land in favor of Don Felipe Roberto Younge.

Don Jose Coppinger, lieutenant colonel of the royal armies, civil and military governor *pro tem.*, and president of the department of the royal domain in this place of St. Augustine of Florida, and of the province thereof: Whereas, in his royal order of the twenty-ninth of March, one thousand eight hundred and fifteen, his Majesty has been pleased to approve the favors and gratifications proposed by my predecessor, the Brigadier Don Sebastian Kindelan, to be given to the officers and soldiers of the veteran and of the militia corps of this province who contributed to the defence thereof in the time of the rebellion; and one of the said favors consisting in the distribution of vacant lands, and considering the representations which Don Felipe Roberto Younge has made me of the distinguished and extraordinary services, both personal and pecuniary, with which he has contributed to the defence of this said province at different times, and particularly during the insurrection which took place in the beginning of the year one thousand eight hundred and twelve, to the loss of his own property, and the economy of the royal treasury, as is made evident more at large in the memorial which he has presented to me under date of the fifth of December of the year last past, in consequence of the merits of which, and of the authority which I exercise, I have thought proper, by my decree of the eleventh of the present month, to accede to his petition limited to the grant which he solicits by way of remuneration, of twenty-five thousand acres of land, with the title of absolute property, south of the place known under the name of Spring Garden, in the following manner: twelve thousand acres as a part of them in the vicinity of the lake or pond called *Second*, and known under the name of *Valdes*, and the remaining thirteen thousand on the pond above known under the name of *Long pond*—the whole situated west of the river St. John; reserving to designate the boundaries and dimensions when both tracts will be surveyed, as stated in the memorial aforesaid, and the decree which exist in the archives of the present notary: wherefore, and in attention to the said recommendable services approved by the will of the sovereign, and to what the laws provide, in order to remunerate with distinction those who deserve to be remunerated, keeping in view the nature of such services, and the quality of those who render them, I have determined to grant, as in the name of his Majesty and of his royal justice, which I ad-

minister, I do hereby grant, to the said Don Felipé Roberto Younge the twenty-five thousand acres of land aforesaid, situated in the indicated places, without prejudice to a third party, for himself, his heirs and successors in absolute property, and to expedite to him, as I do by these presents expedite, the corresponding title, by which I take from the royal domain the right and dominion which it had to the said tracts, and cede and transfer the same to Don Felipe Roberto Younge and his heirs and successors, in order that, in consequence thereof, they possess it as their own, use and enjoy it without any incumbrance whatever, with all their inlets, outlets, uses, customs, rights and servitudes, which they have had, and which in fact and of right belong or may belong to them, and in order that they may, if they see fit, sell, cede, transfer, and alienate the same, as best suits them. To the whole of which I interpose my judicial authority as far as I can, and of right ought, in virtue of what has been exposed, and of the sovereign will. Given under my signature, and countersigned by the subscribed notary of the Government and of the royal domain, in this said city of St. Augustine of Florida, on the twenty-second February, one thousand eight hundred and seventeen.

COPPINGER.

By order of his Excellency:

JUAN DE ENTRALGO,
Notary of the Government and of the Royal Domain.

And afterwards, to wit, on the first day of July, in the year of our Lord one thousand eight hundred and twenty-nine, Thomas Douglass, esquire, United States' attorney for the district of East Florida, brought and filed in the clerk's office aforesaid his answer to the said petition; which said answer is in the words and figures following, to wit:

ANSWER OF UNITED STATES' ATTORNEY.

Superior Court, November term, 1829:

THE UNITED STATES OF AMERICA,
vs.
PHILIP R. YOUNGE.

The answer of Thomas Douglass, United States' attorney for the district of East Florida, to the petition or bill of complaint of Philip R. Younge:

The said attorney, in the name, and for and on behalf of the same United States, saving and reserving to them now, and at all times hereafter, all and all manner of benefit of exception to the manifold errors, defects, and irregularities in the said petition or bill of complaint contained, for answer thereunto, or unto so much thereof as it is material and necessary for them to answer unto, answereth and saith that, whether any such grant was ever made by the Spanish Government of East Florida under the administration of Governor Coppinger, to the said Philip R. Younge, for twenty-five thousand acres of land, as is by him alleged and described in his said petition or bill of complaint, or whether any such surveys as are therein mentioned and described were ever made, or whether the said Philip R. Younge contributed to the defence of the province of East Florida any such distinguished and extraordinary services, either personal or pecuniary, as are in the said petition or bill of complaint alluded to, and as a reward for which it is therein stated and alleged that the said supposed grant of land was made, this respondent has no

knowledge except what he has derived from a perusal of the said petition or bill of complaint, and of the exhibits thereunto annexed, and cannot therefore either admit or deny the same, but respectfully prays this honorable court to require of the said Philip R. Younge due proof of the making and execution of the said supposed grant, and of the said surveys, and of the performance of the said distinguished and extraordinary services, (if indeed any such grant or surveys were ever made, or any such services performed,) and of all the matters and things in the said petition or bill of complaint alleged and set forth, as they are therein stated, according to law and the usages of courts of equity.

And this respondent avers that if any such grant of lands was ever made by the said Governor Coppinger to the said Philip R. Younge, which is not admitted, it was made contrary to, and in violation of the laws, ordinances, and royal regulations of the Government of Spain which were in force in the province of East Florida at the time when the said supposed grant is alleged to have been made as aforesaid, providing for the granting of lands in its provinces, of which said provinces the said East Florida was one, and without any power or authority on the part of the said Spanish Government of East Florida, under the administration of Governor Coppinger, (or on the part of the said Governor Coppinger,) to make it; and that it was (if made in manner and form as aforesaid) never approved by the said Government of Spain, and that it was and is wholly null and void. And further, that no power had been conferred upon the said Government of East Florida under the administration of Governor Coppinger, by the Government of Spain aforesaid, at the time when the said supposed grant is alleged to have been made as aforesaid, to make grants of land in the said province of East Florida of the magnitude and description of the one now claimed by the said Philip R. Younge in this suit.

And this respondent further prays that the said Philip R. Younge may be required to show and prove on the hearing of this cause the specific powers which had, at the time when the said supposed grant is alleged to have been made, been conferred, by the Government of Spain upon the said Government of East Florida, under the administration of Governor Coppinger as aforesaid, to make grants of land in the said province of East Florida; and particularly, that he may be required to show and prove the specific powers under which the said Government of East Florida, under the administration of Governor Coppinger, claimed to act in making the said supposed grant of twenty-five thousand acres of land to the said Philip R. Younge as aforesaid.

And this respondent further saith, that, at the time when it is alleged that the said supposed grant was made, it was, and for a long space of time had been, the fixed and settled policy of the Government of Spain aforesaid to parcel out its colonial domain in reference solely to the object of increasing the population of its provinces, and that, according to that policy, grants of land for the purpose of speculation were never tolerated by the said Government of Spain, and that the said supposed grant of lands (if obtained at all) was, by the showing of the petitioner himself, obtained for the purpose of speculation only.

And this respondent admits that the said Philip R. Younge presented his claim for the tract of land above mentioned to the board of commissioners in his said petition or bill of complaint mentioned, and that the said commissioners recommended the same to Congress for confirmation.

And this respondent suggests, that if any such grant of the said lands was made to the said Philip R. Younge, as he has in his said petition or bill of complaint alleged, it was made since the twenty-fourth day of January, in the year of our Lord one thousand eight hundred and eighteen; and that it was and is rendered wholly null and void by the provisions of the latter clause of the eighth article of the treaty made and concluded between the same United States and his Catholic Majesty the King of Spain, on the twenty-second day of February, in the year of our Lord one thousand eight hundred and nineteen; and that if it was made, as is alleged in said petition or bill of complaint, the said Philip R. Younge has, by a total failure and neglect to use, occupy, or improve the said land for a space of more than twelve years last past, wholly forfeited and lost all right and title (if any he ever had) thereto.

And now, having fully answered all the matters and things in the said petition or bill of complaint alleged, the said attorney prays that the said United States may be hereof discharged, and that their reasonable costs and charges by them in and about the defence of this suit paid, laid out, and expended, may be adjudged and decreed to them, &c.

THOS. DOUGLASS, *U. S. Atty.*

And afterwards, to wit, on the twenty-third day of July, in the year of our Lord one thousand eight hundred and twenty-nine, the said Philip R. Younge brought and filed in the clerk's office aforesaid his replication; which said replication is in the words and figures following, to wit:

REPLICATION.

Superior court, East Florida.

PHILIP R. YOUNGE,
vs.
THE UNITED STATES.

The replication of Philip R. Younge to the answer of Thomas Douglass, esquire, attorney for the United States, defendant:

And this replicant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies in the answer of the said defendant, for replication thereunto, says, that he does and will aver, maintain, and prove, his said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer thereto is very uncertain, evasive, and insufficient in the law to be replied unto by this replicant, without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this replicant is ready to aver, maintain, and prove, as this honorable court shall order and direct, and humbly prays, as in and by his said bill he hath already prayed.

PHILIP R. YOUNGE,
By GEORGE GIBBS, *Att'y in fact.*

ST. AUGUSTINE, 23*d July*, 1829.

And afterwards, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-two,

to which term this cause had come by regular continuance, to wit: on Saturday, the eighteenth day of said term, and the twenty-sixth of said month, the following decree of confirmation was entered of record in this cause, to wit:

PHILIP R. YOUNGE,
against
THE UNITED STATES OF AMERICA. } Land claim 5,000 acres.

DECREE OF CONFIRMATION.

Whereas Philip R. Younge did, in pursuance of the act of the Congress of the United States, entitled "An act supplementary to the several acts providing for the settlement and confirmation of private land claims in Florida," and approved 23d day of May, 1828, on the 19th day of May, 1829, file this petition for the confirmation of certain lands therein mentioned, in the clerk's office of the superior court for the eastern district of Florida; and *whereas* the attorney of the United States for this district did duly appear and answer said petition, and this cause coming on to be heard this day, the said claimant offered in evidence a copy from the office of the keeper of the public archives, of the original grant on which this claim is founded, to the receiving of which in evidence the said attorney for the United States objected, alleging that the original grant *itself* should be produced, and its *execution* proved before it could be admitted in evidence; and that the original only could be received in evidence; which objection was overruled by the court, and the copy from the office of the keeper of the public archives, certified according to law, was ordered to be received in evidence; and the court further ordered that, though by the express statute of this Territory, copies are to be received in evidence, yet in cases where either the United States or the claimant shall suggest that the *original* in the office of the keeper of the public archives is deemed necessary to be produced in court, on motion therefor, a subpœna will be issued by order of the court to the said keeper, to appear and produce the said original in court for due examination there: and such proceedings being had herein as that this claim was submitted to the court for its decree thereon; and the said court having examined the claim of the said petitioner, and the answer of the attorney of the United States, together with the exhibits filed herein, and having maturely considered the same, doth *order*, *adjudge*, and *decree*, that this claim is *valid;* and that, in accordance with the laws and customs of Spain, and under and by virtue of the late "treaty of amity, settlement, and limits, between the United States of America and the King of Spain," ratified by the President of the United States on the 22d of February, 1821, and under and by virtue of the laws of nations, and of the United States, it is hereby *confirmed*, *adjudged*, and *decreed* unto said claimant, as in the grant for the same, filed herein, is set forth. The said five thousand acres hereby confirmed to the said claimant being the remaining portion of a grant to him for twenty-five thousand acres, twenty thousand acres of which grant has on this day been confirmed to Moses E. Levy; which said twenty-five thousand acres of land are mentioned in the grant for the same as being situated south of the place known under the name of Spring Garden, in the following manner: twelve thousand acres as a part of them in the vicinity of a *lake* or *pond* called *Second*, and known under the name of *Valdes;* and the remaining thirteen thousand acres on the *pond* known under the name of *Long pond*—the whole situated west of the St. John's river.

And afterwards, before the superior court for the eastern district of Florida, holden at the court-house in the city of St. Augustine, at the term of October, in the year of our Lord one thousand eight hundred and thirty-two, to wit: on Saturday, the sixth day of said term, and the sixth of said month, the following appeal was entered of record in this cause, to wit:

APPEAL.

PHILIP R. YOUNGE,
against
THE UNITED STATES OF AMERICA. } Land claim 5,000 acres.

This day came Thomas Douglass, esquire, attorney of the United States for this district, and moved the court that an appeal be granted in this case on behalf of the said United States, from the decree of this court, to the Supreme Court of the United States: which is granted accordingly.

And afterwards, before the superior court for the eastern district of Florida, holden in the court-house in the city of St. Augustine, at the term of May, in the year of our Lord one thousand eight hundred and thirty-three, to wit, on Tuesday, the nineteenth day of said term, and the eleventh day of June, the following entry of record was made in this cause, to wit:

REVIVAL OF APPEAL.

THE UNITED STATES,
ats.
PHILIP R. YOUNGE. } Land claim 5,000 acres.

Now, on this day, came Thomas Douglass, esquire, United States' attorney for the district of East Florida, and suggests to the court now here, that, since the granting of the appeal in the above cause to the Supreme Court of the United States, a term of said court has intervened, and that the record herein has not been sent up to the said court. Wherefore, the said attorney, on behalf of the same United States, prays that the said appeal may be revived, and the order therefor extended, and a copy of the record in said cause, duly certified, may be sent up to the said Supreme Court before the first day of the next term thereof, to be holden on the second Monday of January next; and that citation, with notice of said appeal, may be forthwith issued by the clerk of this court, to the appellee; and that the same may be served by the marshal of said district upon the said appellee, or his solicitor or agent, and returned to this court within thirty days from the issuing thereof; which is ordered accordingly.

CITATION OF APPEAL.

And afterwards, on the same eleventh day of June, in the year 1833, a citation of appeal, in pursuance of the above order, was issued in this case; which citation, and the return of the marshal of this district thereon, are in the words and figures following, to wit:

In the name, and by the authority of the United States of America, to Philip R. Younge, or to his agent, attorney, or solicitor, greeting:

You are hereby cited and admonished that an appeal has been taken on the part of the United States, from the decree of the superior court for east Florida, to the Supreme court of the United States, in a certain claim to five thousand acres of land, wherein you, the said Philip R. Younge, are claim-

ant, and the said United States respondent; and that the record in the said cause will be forwarded to the said Supreme Court, to be placed on the docket of said court at the next term thereof, to be holden on the second Monday of January next.

Witness the honorable Robert Raymond Reid, judge of our said [SEAL.] superior court, at the court-house in the city of St. Augustine, this eleventh day of June, A. D. 1833.

GEORGE GIBBS, *Clerk.*
Per K. B. GIBBS, *Dep. Clk.*

THOS. DOUGLASS, *U. S. Attorney for East Florida.*
P. R. YOUNGE, *in pro. per.*

"Executed by delivering a true copy to George Gibbs, esquire, agent for the within named Philip R. Younge, the said Younge not being found in my district." June 18th, 1833.

SAMUEL BLAIR, *Marshal.*

Superior Court, District of East Florida, to wit:

I, K. B. Gibbs, clerk of the said court for the district aforesaid, do hereby certify that the foregoing twenty pages contain a full, true, and complete transcript of the record and proceedings had in the case therein named in my charge.

In testimony whereof, I have hereunto set my hand, at the city of St. Augustine, this first day of October, one thousand eight hundred and thirty-three.

K. B. GIBBS, *Clerk.*

By the honorable Robert Raymond Reid, judge of the superior court for the district of East Florida, to all to whom these presents shall come, be seen, or made known, greeting:

Know ye, that K. B. Gibbs, who hath signed the foregoing attestation, is clerk of the superior court for the district of east Florida; that all due faith and credit are and ought to be given to his acts as such, and that the foregoing attestation is in due form of law.

In testimony whereof, I have hereunto set my hand, and caused [L. S.] the seal of the said court to be hereunto affixed, this first day of October, A. D. 1833, and of the independence of the United States of America the fifty-eighth.

ROB'T RAYMOND REID.